

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was \$1.7 billion in 2005, an increase of \$259 million from \$1.4 billion in 2004. U.S. goods exports in 2005 were \$69 million, up 17.9 percent from the previous year. Corresponding U.S. imports from Cambodia were \$1.8 billion, up 18.0 percent. Cambodia is currently the 141st largest export market for U.S. Goods.

The stock of U.S. foreign direct investment (FDI) in Cambodia in 2004 was \$1 million, the same as in 2003.

IMPORT POLICIES

Tariffs

Cambodia's tariff schedule was first rationalized in 1993 and simplified in 2001, following the country's accession to the ASEAN Free Trade Area (AFTA). The 2001 tariff restructuring resulted in simplification of customs duties from 12 tariff bands to four tariff bands (0 percent, 7 percent, 15 percent and 35 percent), and reduction of the maximum duty rate from 120 percent to 35 percent and the simple average rate to below 15 percent.

In January 2004, Cambodia launched a new customs tariff schedule that implements both the Harmonized System of Commodities Description and Coding System (HS) and ASEAN Harmonized Tariff Nomenclature (AHTN). Under the Common Effective Preferential Tariff (CEPT) scheme of the ASEAN Free Trade Agreement (AFTA), Cambodia will reduce or eliminate customs import duties on most AFTA-origin products by January 2015.

Cambodia and the United States signed a bilateral trade agreement (BTA) in October 1996; the agreement provides for reciprocal NTR tariff treatment. Cambodia acceded to the WTO in October, 2004.

Non-Tariff Barriers

Import prohibition: Cambodia currently prohibits the commercial importation of the following products: narcotics, psychotropic substances and their precursors, toxic wastes and poisonous chemicals and substances, and pesticides. In an effort to curb the spread of avian influenza, Cambodia has also issued a regulation banning the import of poultry products.

Quantitative restrictions and non-automatic licensing: Importation of some goods is subject to restriction and importers are required to have approval from relevant government agencies depending upon the nature of goods. Imports of pharmaceutical

products are subject to prior permit from the Ministry of Health. Importers also need to secure import licenses from the Ministry of Agriculture, Forestry and Fishery for imports of agricultural inputs such as fertilizer, and live animals and meat. Imports of weapons, explosives and ammunition require a license from the Ministry of Defense, while the National Bank of Cambodia approves imports of precious stones.

Foreign Exchange System: Although the Riel is the official currency of Cambodia, the economy is heavily dollarized. Most commercial transactions are conducted in dollars. Under the Exchange Law of 1997, foreign direct investment (FDI) investors are allowed to purchase foreign currencies freely through the banking system. The law specifically states that there shall be no restrictions on foreign-exchange operations, but the transactions must be conducted by authorized intermediaries; i.e., lawfully established banks in Cambodia. These banks are required to report to the National Bank of Cambodia all transactions in excess of \$10,000.

Customs: Cambodia is in the process of reforming its customs regime through a five-year (2003–2008) reform and modernization program to streamline and improve the effectiveness of customs operations and to facilitate trade. With assistance from the International Monetary Fund (IMF), a revised Law on Customs has been drafted and is awaiting National Assembly approval. As part of its WTO accession commitments, Cambodia will implement the WTO Customs Valuation Agreement by January 2009. Although Cambodia has made some progress in reform efforts, customs procedures remain complicated. Both local and foreign businesses have complained that the Customs and Excise Department generally engages in practices that are non-transparent and that often appear arbitrary and irregular. Importers frequently cite problems with undue processing delays, excessive paperwork and formalities driven by excessive discretionary practices.

Taxation: Cambodia levies a 10 percent VAT on goods and services. In theory, VAT is to be applied to all goods and services, but in practice the government began implementing the VAT with major companies. It is now expanding the base to which VAT is applied.

The corporate tax rate is within the range of 20 percent to 30 percent depending on the nature of business. A concessional, as low as zero percent, tax rate will be applied if the government has granted a firm a tax-exempt period. Resident branches of overseas companies or banks are taxed at 20 percent. The government also applies a withholding tax of 14 percent on dividends, royalties, rents and interests.

STANDARDS, TESTING, LABELLING AND CERTIFICATION

Standardization is at an early stage in Cambodia and only partially regulated. The country currently has no body of law governing standards for imported and exported goods. The Sub-decree on Industrial Standards, passed in 2001, provided the basis for rules and procedures for adopting a new standard, technical regulations and conformity assessment procedures. The Law on Industrial Standards is in draft form.

Cambodia is currently working on the establishment of standards and other technical measures based on international standards, guidelines and recommendations. The United Nations Industrial Development Organization (UNIDO) is presently providing assistance to the Department of Industrial Standards of Cambodia (ISC) of the Ministry of Industry, Mines, and Energy (MIME) in creating a new product certification scheme conforming to the requirement of ISO/IEC Guide 65.

Quality control is under the Department of Inspection and Fraud Repression (CamControl) of the Ministry of Commerce. CamControl is the national contact point for Codex Alimentarius. Its primary responsibility is the enforcement of quality and safety of products and services through the establishment of standards and labeling requirements.

The responsibility for establishing industrial standards and certifications resides with the ISC of the Ministry of Industry, Mines, and Energy. The ISC has been assigned as the enquiry point for technical barriers to trade (TBT) and as the agency responsible for notifications and publications required by the WTO TBT Agreement. The Ministry of Health is charged with prescribing standards, quality control, distribution and labeling requirement for medicines.

The Ministerial Regulation on Measures Against Food Products Devoid of Appropriate Label requires detailed labeling of food products circulated in Cambodia. For many products, it is mandatory to have labeling, instructions or warnings in Khmer language. In practice, however, this regulation is often ignored.

Cambodia maintains a pre-shipment inspection system. Société Generale de Surveillance (SGS) may inspect the quality of any goods shipped into the country. In practice, imports are admitted into Cambodia with little reference to standards or rigorous inspection.

Cambodia is obligated to fully implement the WTO TBT Agreement by January 2007 and SPS Agreement by January 2008. Cambodia has committed to implementing a “Risk Management Strategy” for inspection of imported and exported goods in 2006.

Cambodia joined the International Organization for Standardization (ISO) in 1995 and is also a member of the ASEAN Consultative Committee on Standards and Quality (ACCSQ). Cambodia has ratified the ASEAN Framework Agreement on Mutual Recognition Arrangements.

GOVERNMENT PROCUREMENT

Cambodia’s government procurement regime is governed by a sub-decree issued in 1995. Under the sub-decree, Cambodia’s procurement policies are open and well-defined. The sub-decree requires that all international purchases over 200 million riel (\$50,000) for civil work and 100 million riel for goods be made through public tender. The public tender will also be applied to domestic purchases below 200 million riel for civil works

projects and 100 million riel for goods. Both international and domestic bidding is open to all interested bidders through public advertisement.

While Cambodia has clear regulations pertaining to government procurement, the conduct of procurement is often non-transparent and irregular. To eliminate some potential bidders, the public announcement of the tenders is often either subject to a short deadline or not widely publicized. These tactics provide an advantage to a limited number of bidders often connected with government officials.

Cambodia is not a signatory to the WTO Government Procurement Agreement.

EXPORT SUBSIDIES

The Cambodian government does not grant direct export subsidies, but does use preferential tax incentives to attract investment and promote exports. Currently, Cambodia has no agricultural subsidies. The 1994 Law on Investment, amended in 2003, grants incentives and privileges including the exemption, in whole or in part, of customs duties and taxes to qualified investment projects (QIP), which refers to investment projects that have received a Final Registration Certificate issued by the Council for the Development of Cambodia.

The investment law provides an import duty exemption for construction materials, production equipment and production inputs used by export QIPs and domestic QIPs. Supporting QIPs are also entitled to the exemption, but the QIPs are required to pay customs duties and taxes on the production inputs for the quantity that has not been supplied to the export industry or directly exported after review.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cambodia has adopted legislation concerning the protection of intellectual property rights including the Law on Copyrights and Related Rights and Patent and Industrial Designs. Cambodia is a member of the World Intellectual Property Organization (WIPO) and the Paris Convention for the Protection of Industrial Designs.

Cambodia is implementing the WTO TRIPS Agreement, but, comprehensive enforcement remains problematic. The 1996 BTA contained a broad range of IPR protection, which given the limited experience with IPR, will be phased in by the Cambodian government.

The Cambodian government has taken law enforcement action against the piracy of domestically produced music or video products. There has been no enforcement effort, however, against piracy of foreign optical media. Cambodian copyright law allows the owners of IPR to file a complaint with the authorities to take action. However, owners requesting crackdowns on IPR pirating operations must pay support costs to the authorities for conducting the operations.

Trademarks

In 2002, the National Assembly passed a trademark law to implement Cambodia's TRIPS obligations. The law outlines specific penalties for trademark violations, including jail sentences and fines for counterfeiting registered trademarks. It also contains detailed procedures for registering trademarks, invalidation and removal, licensing of trademarks, and infringement and remedies.

Before a trademark law was in force in Cambodia, owners of trademarks were unable to seek relief from infringement in court. The relatively few complaints received were directed to the Ministry of Commerce, which has responsibility for registering trademarks, but does not have clear legal authority to conduct enforcement activities. Nevertheless, the Ministry has taken effective action against trademark infringement in several cases since 1998. The Ministry has ordered local firms to stop using well-known U.S. trademarks. The Ministry of Commerce maintains an effective trademark registration system, registering more than 10,000 trademarks (over 2,900 for U.S. companies) under the terms of a 1991 sub-decree, and has proven cooperative in preventing unauthorized individuals from registering U.S. trademarks in Cambodia.

At least one U.S. company has brought legal action to protect its trademarks in Cambodia. The case reached the Supreme Court in Phnom Penh, which issued a mixed decision that, unfortunately, did not cancel the other party's registrations. The Phnom Penh Municipal Court, however, handed down Cambodia's first trademark conviction in March 2006.

Patents and Industrial Designs

Cambodia has a very small industrial base, and infringement of patents and industrial designs is not yet commercially significant. With assistance from WIPO, the Ministry of Industry, Mines and Energy (MIME) prepared a draft of a comprehensive law on the protection of patents and industrial designs in April 1999. The National Assembly adopted the law and it entered into force in January 2003. The law provides for the filing, registration, and protection of patents, utility model certificates and industrial designs. The MIME has also issued a sub-decree on granting patents and registering industrial designs.

Cambodia has not yet made significant progress toward enacting required legislation in the area of encrypted satellite signals, semiconductor layout designs, and trade secrets.

Copyrights

A copyright law was enacted in January 2003. Responsibility for copyrights is shared between the Ministry of Culture, which handles phonograms, compact discs (CDs), and other recordings; and the Ministry of Information, which deals with printed materials. Although Cambodia is not a major center for the production or export of pirated CDs, videos, and other copyrighted materials, these products are widely available in Cambodian markets. Pirated computer programs, digital video discs (DVDs), and music

CDs are widely used throughout the country.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Cambodia's legislation regarding the services sector has generally complied with the principles and provisions of the General Agreements on Trade in Services (GATS). Cambodia provides market access or national treatment for the cross-border supply, consumption abroad, and commercial presence of almost all services.

Accounting, Consulting and Tax Services: Cambodia provides market access and national treatment to foreign firms providing accounting, auditing and taxation services. Major international accounting and consulting firms operate in Cambodia.

Legal Services: According to the Cambodian Law on the Bar adopted in 1995, foreign lawyers cannot represent clients, conduct activities to attract clients, or publish commercial advertisements. However, they are permitted to work in commercial association with Cambodian lawyers. The commercial association requirement does not apply when legal services are provided in the area of foreign and international law.

Architectural and Engineering Services: Cross-border supply for architectural services is not restricted and national treatment is granted. Foreign citizens can provide engineering and integrated engineering services.

Telecommunications Services: For the most part, access to Cambodia's telecommunications services market is not restricted. Private participation in mobile services, e-mail, electronic data interchange and code and protocol conversion are allowed and national treatment is accorded. In addition, Cambodia is committed to permitting licensed suppliers of mobile communications services to choose which technology to use for such services.

Cross-border supply for voice telephone services, circuit-switched data transmission and private leased circuit services are allowed only over circuits leased from Telecom Cambodia. This restriction will be eliminated by January 2009 and foreign participation of up to 49 percent equity will be allowed. Cambodia is making preparations to create an independent regulatory body.

Audiovisual Services: Cambodia does not prohibit foreign firms from distributing foreign films and videotapes. However, given poor enforcement of the IPR regime, legitimate foreign and domestic products are scarce and expensive whereas pirated products are abundant and cheap.

Distribution Services: No limitation on market access or national treatment is imposed on foreign firms wishing to engage in distribution services; i.e., wholesale trade and retailing services. Like other business activity, foreign firms are required to register with the Ministry of Commerce to obtain a business license.

Educational Services: Cambodia faces a shortage of qualified teachers and is in need of international-quality educators and education. Foreign participation in educational services is not restricted. Currently there are several foreign-owned schools in Phnom Penh.

Insurance Services: Licensed insurance companies including foreign companies can provide all types of insurance products. Cambodia's insurance sector is governed by the Law on Insurance of 2000. A few foreign insurance companies operate in Cambodia.

Banking services: Cambodia allows foreign firms to operate as either 100 percent owned subsidiaries or as branches. The 1999 Law on Banking and Financial Institutions and subsequent regulations guarantee foreign banks rights and obligations equal to local banks. The law imposes no restrictions on foreign ownership of banks. There are a few foreign bank subsidiaries operating in Phnom Penh.

Health-Related Services: Cambodia permits cross-border of hospital services. For commercial presence, foreign ownership and management of private hospitals and clinics is permitted as long as at least one director for technical matters is Cambodian. Foreign firms are allowed to provide dental services through joint ventures with Cambodian legal entities.

Tourism and Travel-Related Services: Tourism is one of the most important sectors of the country's economy. Cambodia does not restrict foreigners' participation in this sector. Foreign companies may establish a commercial presence to operate hotels, restaurants, travel agencies, and tour operator services, provided that they register with the Ministry of Commerce for business licenses.

INVESTMENT BARRIERS

Cambodia's investment climate is poor. The World Economic Forum's 2005 competitiveness survey ranked Cambodia 112 out of 117 countries surveyed. The World Bank also ranked Cambodia near the bottom of the list on business climate. Foreign direct investment (FDI) has declined over recent years. Approved investment fell to \$61 million in 2004 from \$129 million in 2003. The stock of U.S. investment in Cambodia was estimated to be \$1 million in 2004.

The Cambodian government actively solicits foreign private investment to boost its economic development. Cambodia's 1994 Investment Law, amended in 2003, is liberal and accords national treatment to all foreign investors, but the Constitution restricts foreign ownership of land. Foreign investors may use land through concessions, unlimited long-term land leases and renewable limited short-term leases.

Cambodia has one of the most liberal and competitive investment laws in the region, but potential investors are often deterred by excessive bureaucracy and corruption. Cambodia has the potential for business investment in almost all sectors. The

government particularly encourages investment in agriculture and agro-processing industries, environmental protection, export-oriented industries, tourism and infrastructure. Nonetheless, in practice, local and foreign businesses often complain of complex and burdensome bureaucracy and corruption.

Cambodia has attempted to reverse the decline in foreign investment through reforms intended to improve the investment climate. Through its biannual Government-Private Sector Forum, Cambodia has managed to reduce business registration fees from \$635 to \$177 and decrease the registration period from 30 days to 10.5 days. Other reforms are under way to improve the business environment, including a World Bank-funded trade facilitation reform program.

ELECTRONIC COMMERCE

E-commerce is a new concept in Cambodia. Online commercial transactions are extremely limited, and Internet access is still in its infancy. No legislation exists to govern these sectors, but no specific restrictions on products or services traded via e-commerce have been imposed.

The exclusive right to operate a Voice over Internet Protocol (VoIP) service has been granted to one local company.

OTHER BARRIERS

Corruption and Governance

Corruption is pervasive throughout the government and business sector. In 2005, Transparency International ranked Cambodia 139 out of 159 countries surveyed for graft. Both foreign and local businesses have identified corruption or malfeasance in Cambodia as a major obstacle to business and a deterrent to foreign direct investment.

Prime Minister Hun Sen has publicly emphasized the need to fight corruption, and has said that corruption takes a toll on economic performance and poverty alleviation. During the National Conference on Good Governance in December 2004, he described bad governance as “a landmine buried in Cambodia’s path towards reform”. In the December 2004 Consultative Group (CG) meeting of development assistance agencies, donors established a benchmark of having a new anti-corruption law adopted by the Council of Ministers and submitted to the National Assembly before the next CG meeting, which was held March 2-3, 2006. The anti-corruption law has yet to be completed. In January 2005, the Prime Minister instructed the Ministry of National Assembly to resurrect a decade-old draft anti-corruption law. An informal donor working group including the United States is working closely with the government to produce a revised draft law that meets international best practices.

Judicial and Legal Framework: Cambodia’s legal framework is incomplete and unevenly enforced. Many business-related draft laws are still pending. The judicial

system is often arbitrary and subject to corruption. Many Cambodian and foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence, which constitutes one of the most serious legal risks that investors face.

Smuggling: Widespread smuggling of commodities such as vehicles, fuel, soft drinks and cigarettes has undermined fair competition, legitimate investment, and government revenue. The government has issued numerous orders to suppress smuggling and created various anti-smuggling units within the governmental agencies, particularly the Department of Customs and Excise.

In the latest drive to curb smuggling, Cambodia targeted high revenue commodities such as fuel, vehicles and electronic goods. Prime Minister Hun Sen issued another order to prevent and crackdown on smuggling. To encourage implementation, incentives are given to authorities or officials who have confiscated smuggled goods. Despite these efforts, smuggling remains a problem in Cambodia. Crackdowns are often perfunctory and most intense immediately after the onset of anti-smuggling campaigns.